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India: Domestic violence, including legislation, availability of state protection and support services for victims
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

The prevalence of domestic violence in India is "high," according to an article co-published in *Social Science & Medicine* by researchers from the University of California, Berkley, the India Institute of Management, and the International Center for Research on Women, Washington D.C., among other authors (Krishnan et al. Jan. 2010). The National Family Health Survey reports that 37 percent of ever-married women have experienced spousal physical or sexual violence (IIPS 2007, xIvi). The survey also indicates that only 2 percent of women went to the police for assistance in dealing with violence (ibid., 524; Lawyers Collective 2008, 12). According to an article published in the *International Journal of Law, Policy and the Family*, women in India are subject to types of violence unique to that country, including, for example, "dowry harassment" and "dowry death" (Karanjawala and Chugh 6 Aug. 2009, 290).

The Protection of Women from Domestic Violence Act

The Protection of Women from Domestic Violence Act (PWDVA) 2005 is meant to "provide for more effective protection" to women who experience domestic violence (India 2005). The Act defines domestic violence as physical abuse, sexual abuse, verbal and emotional abuse or economic abuse (ibid., Chapt. II; Karanjawala and Chugh 6 Aug. 2009, 295). Under the Act, marital rape is illegal (ibid., 296). The Act applies to all of India, except Jammu and Kashmir (India 2005; Chapt. I (2)). Jammu and Kashmir tabled its own domestic violence legislation on 26 March 2010 (*Outlook India* 26 Mar. 2010).

The PWDVA outlines various forms of relief for women experiencing domestic violence, including protection orders, residence orders, custody orders, monetary relief and compensation orders, and interim and ex-parte orders (Lawyers Collective 2009, 8). The PWDVA also mandates that states create a system for the implementation of the law (ibid., 33). The legislation calls for states to create support systems, including the creation of positions known as protection officers and the provision of service providers such as "notified" (i.e., registered) shelters and medical facilities (ibid., 7; Karanjawala and Chugh 6 Aug. 2009, 297).

According to a 2009 article published in *Women's International Perspective* (WIP), more than 10,000 cases of domestic violence were filed within a year of

the PWDVA coming into force and "the numbers have been rising steadily over the last few years" (26 Oct. 2009).

According to the article published in *International Journal of Law, Policy and the Family*, the PWDVA addresses domestic violence for the first time as a human rights issue (Karanjawala and Chugh 6 Aug. 2009, 293). The article states that the legislation takes into account the private nature of domestic violence and the fact that such a crime is difficult to "prove beyond reasonable doubt" (ibid.). It further states that the law takes into account India's "unique" social structure (ibid., 305).

Definition of domestic partnership

The PWDVA states that any woman in a domestic relationship with an adult male may initiate proceedings if she has been subjected to domestic violence by him or his relatives (ibid., 294). A domestic partnership is broadly defined and takes into account unmarried couples who are living together, as well as joint family members (ibid.). In joint families, several generations live together under one roof (BBC 21 June 2008).

Under the PWDVA, a woman can file charges against her male partner's "abusive" relatives, including in-laws (Karanjawala and Chugh 6 Aug. 2009, 294). According to a document produced by the Human Rights Law Network (HRLN) - a human rights non-governmental organization (NGO) based in India - several women have filed for protection orders against their mothers-in-law (HRLN 2009b). In addition, women can file charges against men from their own family (Karanjawala and Chugh 6 Aug. 2009, 294). For example, according to Plus News Pakistan, a Delhi court ruled that a woman who was allegedly abused and harassed by her brothers, with whom she lived, could initiate proceedings under the PWDVA (1 Mar. 2010).

Right of residency

The PWDVA recognizes that a woman has a right to live in a shared household, regardless of whether or not she has any legal title to the home (Karanjawala and Chugh 6 Aug. 2009, 300; Breakthrough 2008; Lawyers Collective 2009, 7). A woman may apply for a residency order to prevent her eviction from the matrimonial home as well as to prevent a man or his relatives from entering the space in the home where she resides (Karanjawala and Chugh 6 Aug. 2009, 300; India 2005, Chapt. IV, Sec. 17). If a woman needs to find alternative accommodation, the PWDVA stipulates that her partner must pay the associated costs (*Frontline* Mar.-Apr. 2010; India 2005, Chapt. IV Sec.19 (f)).

However, the Supreme Court has ruled that a woman cannot claim residence under the PWDVA if the matrimonial home is legally owned by her male partner's mother (Lawyers Collective n.d.; *Frontline* Mar.-Apr. 2010; Karanjawala and Chugh 6 Aug. 2009, 302). That said, the Madras High Court later ruled against a man who had transferred his property to his mother shortly before dispossessing his wife (Lawyers Collective n.d.). The court upheld the wife's residency order (ibid.). In Bengal, a court issued an order to prevent a man from selling his house, in order to make sure his wife would have a home (*Times of India* 22 May 2007). An article published in the *Cornell Daily Sun* quotes a project coordinator with the Lawyers Collective (an India-based advocacy group composed of lawyers) as saying the PWDVA has helped stop recently widowed women from being evicted from their homes (24 Mar. 2009).

The right of residency, however, does not translate into the right of ownership (*Frontline* Mar.-Apr. 2010; Lawyers Collective 2009, 7). In addition, the authors of the *International Journal of Law, Policy and the Family* article state their opinion that residency orders may be impractical to implement (Karanjawala and Chugh 6 Aug. 2009, 302).

Monetary relief and maintenance

Under the Act, a woman can file for monetary relief and maintenance (Breakthrough 2008; Karanjawala and Chugh 6 Aug. 2009, 301; India 2005, Chapt. IV Sec. 19-20). In a report monitoring the implementation of the PWDVA, the Lawyers Collective states that an analysis of available data indicates that maintenance orders are "routinely" granted by judges (2008, 70). Plus News Pakistan reports that a Delhi court ruled that a woman should be awarded maintenance that reflects the standard of living she enjoyed with her husband - not the relatively lower standard of living she experienced in her parents home while unmarried (20 Jan. 2010; *Frontline* Mar.-Apr. 2010). However, the Lawyers Collective states that maintenance orders are not always satisfactory from the women's point of view (2008, 70). Similarly, a senior advocate of the Supreme Court wrote in a magazine article that women are commonly awarded sums of money too low for them to live on (*Frontline* Mar.-Apr. 2010).

Protection officers

Protection officers facilitate access to court and support systems and take action to prevent further domestic violence (Lawyers Collective 2009, 37). On behalf of a woman, protection officers can also file domestic incident reports (DIRs) with the police and relevant magistrate (HRLN 2009a). According to the article published in the *International Journal of Law, Policy and the Family*:

[t]he key position created by the Act, which is in essence the pivot on which the entire machinery of the Act hinges, is that of 'protection officer'. The protection officers, who will predominantly be women, will act as a link between the judicial machinery and the society and shall perform a variety of important tasks necessary to bring the relief available under the Act to the women for whose benefit it was intended. (Karanjawala and Chugh 6 Aug. 2009, 297)

Similarly, the Lawyers Collective states, "[b]y linking women to the court and other support services, POs [protection officers] are envisaged as the critical link between women and justice" (Lawyers Collective 2008, 67). The Lawyers Collective further states that the protection officer is meant to ensure access to the law for all women- not just those with the education to be aware of the law and the money to hire legal counsel (ibid.).

The Lawyers Collective found that every state in India has protection officers (Lawyers Collective 2008, 67). However, in most states, these officers are also doing other jobs and therefore do not work as protection officers full-time (Lawyers Collective 2008, 67). For example, in some cases, protection officers also serve as child development programme officers (ibid.). Sources report that this situation means that protection officers may be under-qualified and can sometimes be too overworked to be effective in their jobs (ibid., 20; *Express India* 6 Dec. 2008). On the other hand, the Lawyers Collective reports that protection officers who also do other jobs sometimes have a pre-existing familiarity with relevant government services and a network of contacts that make them more effective in their work (Lawyers Collective 2008, 20-21).

Sources indicate that few states have adequately budgeted for providing protection officers with the infrastructure and training they need to do their jobs effectively (ibid., 67; *Express India* 6 Dec. 2008). However, Andhra Pradesh has budgeted for protection officers and taken a multi-pronged approach to addressing domestic violence (Lawyers Collective 2008, 24). Delhi and West Bengal have full-time dedicated protection officers (ibid., 20). Karnataka has allocated two legal aid lawyers for each protection officer (ibid.).

The number of domestic violence cases that have been handled by protection officers also varies by state, ranging from 8 cases in Sikkim to 3,892 cases in Uttar Pradesh in 2008 and 2009 (Lawyers Collective 2009, 38).

A media source reports that a survey undertaken by the Centre for Social Justice with support from Oxfam, found that protection officers often lack sensitivity and competency (DNA 3 July 2008). Similarly, the Lawyers Collective surveyed protection officers in Delhi and two districts of Rajasthan and found that some officers held "disturbing" attitudes (2009, 75). In particular, nearly 75 percent of protection officers in Delhi and more than 90 percent of protection officers in Rajasthan said they believed domestic violence could best be resolved through counselling, since it is a "family affair" (Lawyers Collective 2009, 75). Two protection officers in Delhi and two others in the districts of Rajasthan that were surveyed believed that women "deserved to be beaten" in some cases (ibid.). The report of the Lawyers Collective puts forward the opinion that these sorts of beliefs could represent "serious impediments" to the law's implementation (ibid., 91).

Court system

The Lawyers Collective reports that a "significant number" of High Court judgements interpret the law with "commendable" gender sensitivity (2008, 70). However, according to a media article, there is a lack of awareness about the provisions of the Act among trial court judges and some lawyers (DNA 3 July 2008).

The law requires that domestic violence cases be addressed within 60 days, but sources report that this deadline is "never adhered to" (*The Hindu* 9 Mar. 2010; DNA 3 July 2008; Lawyers Collective 2009, iii). Reuters reports the experience of one woman whose case remains in limbo a year after it was filed (8 June 2009). The Lawyers Collective states "chronic delays" are a well-known fact in the Indian justice system, adding this slow pace can be "devastating" when a woman is seeking anticipatory relief (2008, 69). The Lawyers Collective further states that such delays represent an "insurmountable barrier" to women seeking action through the Act (2009, iii).

Police

A Lawyers Collective survey of police officers indicates that police in Delhi and Rajasthan believe that, in situations of domestic violence, the personal safety of a woman is less important than the well-being of her family and children (Lawyers Collective 2009, 108). The same survey also indicates that 22 percent of police officers have received training on the PWDVA (ibid., 107). Similarly, sources report that police officers are sometimes unhelpful to women seeking access to the PWDVA (DNA 3 July 2008; HRLN 2009a). HRLN reports the experience of a woman who was told by police officers that she should be "ashamed" of seeking help from the police (2009a).

Reuters reports that wealthy men are known to use their money to delay proceedings, hand out bribes or "muddy" the proceedings (8 June 2009). Similarly, according to the Lawyers Collective survey, women from Rajasthan reported that their domestic violence cases were "spoiled" by police officers who accepted bribes or "connived with" their spouse (Lawyers Collective 2009, 104).

Service Providers

The PWDVA calls for the establishment of registered service providers, which are relevant non-governmental organizations (NGOs) registered under the Act that provide services such as counselling or shelter (Lawyers Collective 2009, 43-45). A registered service provider can draft a DIR on behalf of a woman, if she wishes, and is responsible for ensuring that a woman is medically examined, that the police are sent a copy of the medical report, and that a woman has access to a shelter, if needed (ibid., 44-45). The Lawyers Collective states that service providers vary in terms of how effectively they fulfil their responsibilities and notes that they also lack funding (ibid., 44).

Concerning state-wide registration of official service providers addressing domestic violence, as of 2009, Andhra Pradesh had 72 service providers; Assam: 33; Chandigarh: 12; Delhi: 28; Haryana: 8; Himachal Pradesh: 14; Karnataka: 115; Kerala: 60; Madhya Pradesh: 47; Maharashtra: 32; Manipur: 7; Meghalaya: 3; Mizoram: 6; Orissa: 30; Punjab: 4; Rajasthan: 79; Sikkim: 7 (2 under consideration); Tamil Nadu: 31; Uttar Pradesh: 95; West Bengal: 57 (Lawyers Collective 2009, 44). Information was not available for Arunachal Pradesh, Chattisgarh and Gujarat.

One example of a registered service provider under PWDVA is the Special Cells for Women and Children (ibid., 29). With branches in 17 districts of Maharashtra, these Special Cells place social workers in police stations to help women experiencing domestic violence with crisis intervention (Lawyers Collective 2008, 29-30). Family Counselling Centres are service providers that offer counselling, and will refer women to services such as legal aid, shelters and vocational training (ibid., 30).

Shelters

In addition, shelters can be registered under the PWDVA (Lawyers Collective 2009, 44). To do so, they must undergo a government inspection and have adequate security (ibid., 46-47). The number of shelters varies by state, ranging from 1 in Chandigarh to 115 in Karnataka (ibid., 46).

Other organizations addressing violence against women include several Oxfam-supported centres that provide counselling, advice and access to the police and legal services (*The Hindu* 19 Feb. 2010). Men Against Violence & Abuse (MAVA) is the first men's organization that focuses on addressing gender-based violence, including by working on sensitizing young men to gender issues (MAVA n.d.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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